Dual nationality

*Alonso Gómez-Robledo Verduzco**

The state has exclusive power over the granting or loss of nationality, as has been recognized since the old Permanent Court of International Justice ruled on Tunisia's and Morocco's nationality decrees in its consultative opinion of February 7, 1923.

Thus, every sovereign state is competent to grant its nationality to individuals born within its territory or residing within its borders.

Nevertheless, international jurisprudence is generally unanimous in stating that the exercise of this power is not discretionary; that is, that the attribution of nationality shall be conditioned by certain fundamental prerequisites in order to be valid or open to challenge by other states.

If nationality has traditionally been defined as an individual's belonging to the population that constitutes a state, it should be recalled that the International Court of Justice and the Commission on International Law, with a greater degree of clarity, have considered it to be a juridical link based on a social fact of cohesion, of adherence, an effective union of existence, interests and sentiments, in which such factors as history, language, religion and culture play a preponderant role within this set of traditions and common ideals.

What is most desirable is that the juridical notion of nationality coincide as closely as possible with the sociological notion, on both the collective and individual levels.

Criteria for the attribution of nationality of origin are practically universal. They are based on relationship, *ius sanguinis*, and connection to territory, *ius soli*; as well as the expressed desire making it possible for a person, on the basis of their request, to acquire a new nationality —in other words, nationality through nationalization.

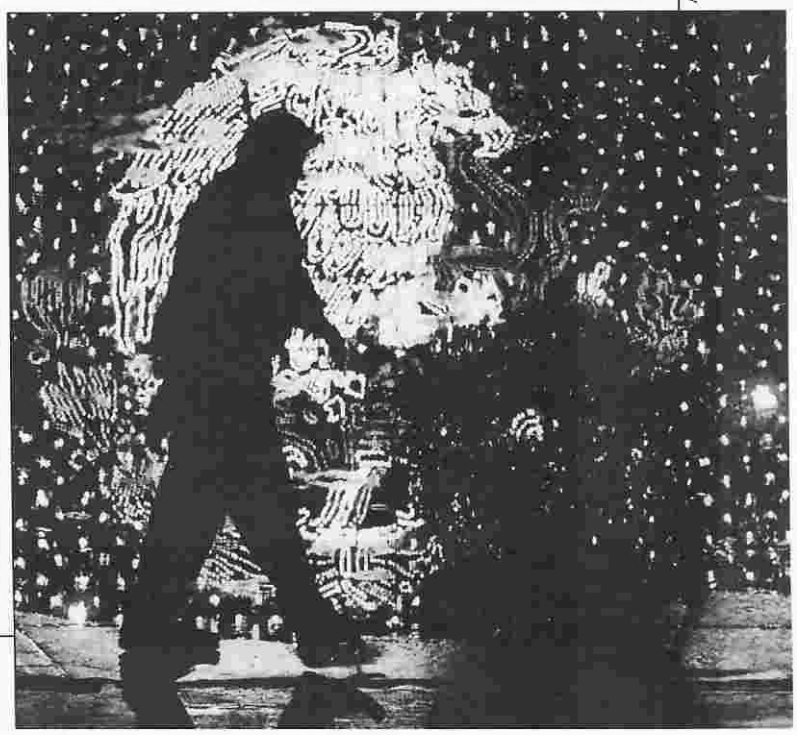
The inevitable consequence of the nature and diversity of possible linkages in this field is that certain individuals will conform to the conditions for granting them more than one nationality; according to this hypothesis such a person simultaneously belongs to two or more states.

At present, this situation derives principally from the simultaneous application of the criteria of *ius sanguinis* and *ius soli* (in cases where these two elements do not coincide with regard to a given individual); from the acquisition, through marriage, of a spouse's nationality while the person's original nationality is maintained; and from the transmission of nationality *jure sanguinis* through both the mother and the father of the person involved.

From the viewpoint of the international community, it is clearly highly inconvenient that a person may choose between one or another nationality according to what is most in line with that individual's interests.

In conflicts where, for example, the question is which law may be applied by Mexican authorities in the case of an individual to whom both Mexican and Guatemalan laws attribute nationality, in practice the states involved resolve the problem through the principle of the law of location. In other words, in our example, the individual in question will be considered Mexican in Mexico and Guatemalan in Guatemala.

It is evident —and this has always been recognized in classic conceptions and arbitration jurisprudence— that the possibility that two or more nationalities may coexist in a



Angeles Torrejón/Imagenlatina

* Investigator at UNAM's Institute for Juridical Research.

single individual is a genuine absurdity, in both juridical and political terms, leading to counterposed and incompatible situations.

A person cannot exercise rights in several states at the same time without this causing a series of personal difficulties; such a situation can become an inexhaustible source of international conflicts, above all with regard to the fulfillment of military obligations and the possible recourse to diplomatic protection.

According to most internal legislation, nationality may be lost in the case of some event expressly covered by a law in the state of origin; this is usually based on certain causes determining the severing of a person's connection with the state in question.

In some situations it is desirable that the loss of nationality be subordinated to an effective break of links with the country of origin, in order to counteract possible fraud consisting of evasion of the obligations connected with the attribution of nationality at the same time as the person concerned continues to enjoy prerogatives derived from the same attribution.

Thus, for example, a person should not be allowed to renounce their nationality at the same time as they maintain their principal domicile within their country of origin.

If one of the basic reasons for recent draft bilis aimed at regulating "dual nationality" for Mexicans abroad —with special reference to our citizens who work in the United States— is to avoid the automatic loss of Mexican nationality due to the voluntary acquisition of another nationality, it will be sufficient to base ourselves on the Nationality Law of 1993. This law, like its predecessor of 1934, expressly and clearly states that Mexican nationality is not lost when the acquisition of a foreign nationality has occurred due to law, simple residency or because it is an indispensable condition for gaining employment or maintaining employment previously acquired.

A current of opinion has recently arisen which, in light of the new international context, increasingly accepts that dual nationality may be adopted as a juridical system; this leads to a deep-going change of mentality. A prominent example of this change is found in the European Community and its agreement, in principle, to establish a common passport which would be an expression of European citizenship coexistent with the various state nationalities.

But what is of vital importance is that if Mexico eventually signs dual-nationality treaties, it must be very clear that a person may juridically possess two nationalities on the condition that only one of them will, at a given time, be fully operative. In other words, the nationality of origin would remain in a latent state, with the inherent rights it involves suspended.

Conceived of in this way, the dual-nationality system would imply the "hibernation" (in A. Navarro's words) of one nationality while the other holds sway operationally. The two nationalities remain, but with different juridical effectiveness. In this sense, a person or entity, if he or it makes use of the dual nationality established by a treaty, will in no case be able to invoke both nationalities at the same time.

The principle of effectiveness, which is far-reaching in international law, acquires a particular relevance in matters of nationality, since in order to resolve a particular controversy judges will be guided, in an infinite number of cases, by this principie. (This has been true, for example, in the famous leading cases of the Canevaro Arbitration and the Nottebohm Sentence.)

In this context, we find a very apt rendering of the principie of effectiveness in the Statute of the International Court of Justice: "Any person who, in order to be elected a member of the tribunal, could be held to be a national of more than one state will be considered a national of the state where they usually exercise their civil and political rights" (Article 3, 72).

Under the Mexican law which has been in effect since 1993 (as well as the old Mexican Nationality and Naturalization Act of 1934), any Mexican citizen who holds another nationality, however acquired, must renounce that nationality and swear allegiance to Mexico.

Although this legal requirement has been in existence for many years, it was not strictly enforced by the Mexican government until January 1973, when the government decreed that ali Mexicans holding another nationality must confirm their Mexican nationality by means of a certificate issued by the Secretariat of Foreign Relations.

The Mexican government allows its citizens to have dual nationality up to the age of eighteen, freely issuing them passports which permit them to exit and re-enter the country as Mexican citizens. At the age of 18, however, the government strictly enforces the law requiring such dual nationals to renounce any other nationality they may hold and pledge allegiance to Mexico.

This is accomplished by requiring the individual to signan application for a Certificate of Mexican Nationality which contains this oath of allegiance and a renunciation of any other nationality.

Under current U.S. law, signing this application is a potential act of expatriation which usually results in the loss of American citizenship, since it involves a clear-cut oath of allegiance to a foreign state (U.S. Immigration and Nationality Act of 1952, Section 349, paragraph 2).